IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 4728 of 2004(K)

WCC.117/1997 of W.C.C., KANNUR

PETITIONER:

P.V.RADHAKRISHNAN, AGED 50 YEARS,
S/O. SREEDHARAN, VADASSERIYIL HOUSE,
KAVUMANNAM POST, VYTHIRI TALUK, WAYANAD DIST.

BY ADV. SRI.PEEYUS A.KOTTAM
SRI.P.DALBI EMMANUEL

RESPONDENTS:

1. **COMMISSIONER FOR WORKMEN'S COMPENSATION & DEPUTY LABOUR COMMISSIONER, KANNUR.**

2. **NALINAKSHI, W/O. LATE MOHANAN M.D., MUNHIYANIKKAL HOUSE, VALAVAYAL P.O., IRULAM, WAYANAD.**

3. **VINOD, S/O. LATE MOHANAN M.D., MUNHIYANIKKAL HOUSE, VALAVAYAL P.O., IRULAM, WAYANAD.**

4. **GEETHA, D/O.LATE MOHANAN M.D., MUNHIYANIKKAL HOUSE, VALAVAYAL P.O., IRULAM, WAYANAD.**

5. **BILBY, D/O. LATE MOHANAN M.D., MUNHIYANIKKAL HOUSE, VALAVAYAL P.O., IRULAM, WAYANAD.**

6. **VALSA, AGED 35 YEARS, W/O. LATE T.N.BABU, THOZHUTHINGAL HOUSE, P.O. VALAVAYAL, PAPPLASSERY, IRULAM, WAYANAD.**

7. NEETHU, AGED 16 YEARS,
D/O. LATE T.N.BABU, THOZHUTHINGAL HOUSE,
P.O. VALAVAYAL, PAPPLASSERY, IRULAM, WAYANAD,
REPRESENTED BY NATURAL GUARDIAN,VALSA(6TH RESPDT.)

8. KUTTAN, AGED 14 YEARS,
S/O. LATE T.N.BABU, THOZHUTHINGAL HOUSE,
P.O. VALAVAYAL, PAPPLASSERY, IRULAM, WAYANAD,
REPRESENTED BY NATURAL GUARDIAN,VALSA(6TH RESPDT.)

BY ADV. SRI.KALEESWARAM RAJ R2 TO R5

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 4728/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE EXPARTE JUDGMENT IN WCC NO. 117/97 DT. 16/7/01 BY THE R1.

EXT.P2. COPY OF THE APPLICATION BY THE PETITIONER BEFORE THE R1 DT. 1/4/2003.

EXT.P3. COPY OF THE MEDICAL CERTIFICATE BY DR. M. SIVANANTHAN, B.A.M.

EXT.P4. COPY OF THE ORDER IN THE APPLICATION BY THE PETITIONER TO SET ASIDE THE EXPARTE ORDER DT. 27/7/2003.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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KURIAN JOSEPH, J.

W.P. (C). NO. 4728 OF 2004

Dated this the 22nd day of August, 2007.

J U D G M E N T

Petitioner approached this Court aggrieved by Exhibit P4 order passed by the first respondent-Commissioner for Workmen's Compensation. As per the said order, Commissioner refused to set aside the ex parte award passed against the petitioner.

2. According to the petitioner, except stating that the petition to set aside the ex parte award was filed belatedly, there is no consideration on the merits of the case. I am afraid that contention cannot be appreciated. Though Exhibit P4 is styled as a judgment, apparently it is a mistake. It is only an order on the petition filed by the petitioner herein to set aside the ex parte award.

3. It is stated in detail in the order itself that the petitioner had entered appearance on 15.09.1999, but, thereafter did not do anything. It was in such circumstances only ex parte evidence was taken and an award was passed. The award was communicated to the petitioner by registered post. But the same

was returned as unclaimed. Show cause notice was issued, which was not responded to. Thereafter, coercive steps were taken under the Kerala Revenue Recovery Act and only at that time the petition was filed to set aside the ex parte award.

In such circumstances, according to me, the Commissioner rightly found that there is no merit in the petition to set aside the order (sic award) dated 16.07.2001. Thus, there is no merit in the writ petition and it is accordingly dismissed, however without prejudice to the liberty to the petitioner to file an appeal against the award under Section 30 of the Workmen's Compensation Act, 1923.

KURIAN JOSEPH, JUDGE.

smp